



January 18, 2022

VIA ECF

Hon. Paul A. Engelmayer, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: ***Lestingi v. The New York and Presbyterian Hospital et al***
Case No.: 1:20-CV-8800 (PAE)

Dear Judge Engelmayer:

Please be advised that we represent the Plaintiff in the above action. I respectfully write this letter in accordance with ¶ 2(C) of Your Honor's Individual Practices, in response to Defendants' letter dated January 12, 2022 (Dkt. No. 27), and to request a conference before Your Honor to discuss the items raised in Defendants' letter.

As a preliminary matter, there are several misrepresentations in Defendants' letter that I would like to clear up: 1) we provided Defendants' counsel with deposition notices (for dates within the current deadlines) before their letter was filed; and 2) we did not refuse to engage in meaningful conferral leading up to the deposition. Most significantly, Plaintiff's deposition was completed today, January 18, 2022.

I informed counsel on January 5, 2022, that I was unavailable to move forward with the deposition and asked them to meet and confer regarding alternate availability. I was ill and ultimately tested positive for Covid-19 later that week. Defendants' counsel indicated (via email) that they were unwilling to reschedule (despite the fact the deposition deadline was not for another three weeks). Notably, they were able to notify the court reporter and avoid any cancellation costs. In response to counsel's email, once again I requested that we schedule a call to meet and confer. Moreover, I did not receive phone calls from counsel (who has my cell and has communicated via my cell previously).

Rather, Defendants' counsel submitted their letter before we had an opportunity to speak. After Defendants' filed their letter on the docket, I emailed counsel on January 12, 2022, asking to meet and confer regarding rescheduling Plaintiff's deposition. Ultimately, we were able to meet and confer on January 14, 2022, and scheduled Plaintiff's deposition for January 18, 2022. Plaintiff's deposition was completed today, January 18, 2022, and the depositions of the individual defendants are noticed for next week. The current deadline to complete depositions is January 28, 2022.

Defendants' letter is premature and wholly inappropriate. As such, we respectfully request that Defendants' request for sanctions be denied in its entirety, and Defendants' request to compel Plaintiff's deposition be denied as moot (since Plaintiff appeared and completed her

deposition). Lastly, Plaintiff should not be precluded from deposing the individual defendants as Plaintiff timely served deposition notices on January 12, 2022.


Respectfully submitted,

DEREK SMITH LAW GROUP, PLLC

/s/Zack Holzberg
Zack Holzberg

Cc: Counsel for Defendants (via ECF)

The Court has received the parties' letters at docket numbers 27 and 28. The Court declines to take action at this time and expects counsel to conclude discovery in a collegial manner. The Clerk of Court is respectfully directed to terminate the motion pending at docket number 27. SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: January 19, 2022